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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,775	01/03/2002	Bruce Elliot Kramer	TREADMILL1	8566

7590 08/15/2008
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EXAMINER

CROW, STEPHEN R

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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08/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/033,775	KRAMER ET AL.	
	Examiner	Art Unit	
	Steve R. Crow	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-7,10-13,17-19,22-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-7,10-13,17-19,22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2-6-08</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

Once again,as stated in the previous office action:

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims.

Therefore, the two pairs of rollers and the pair of endless belts must be shown or the feature(s) canceled from the claim(s).

2. **No new matter should be entered.**

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 6-7,10-12,18-19,22-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The pair of endless belts and other structure claimed are not described and shown, as originally filed, by the Disclosure.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Moon et al.

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kelsey et al.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,5 and 13,17,18,22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen.

Moon et al discloses all of applicant's claimed invention except for the specific widths claimed.

Derksen teaches the well recognized use of treadmills for training horses as shown in figure 3. In view of this well recognized treadmill use, it would have been obvious to one skilled in the art to enlarge the Moon et al treadmill to any desirable width such as 45 inches wide for accommodating any desired animal for exercise purposes.

The examiner notes that this is a matter of design choice and is a matter of size or degree, as modifications that would have been obvious to an artisan of ordinary skill in light of the teachings of the prior art.

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An enlarged treadmill width of 45 inches would be desired to accommodate

extremely large persons or animals and is considered a design choice which carries no

patentable weight. As to the method claims 13-18, such a sized treadmill could be used for any desired function , such as accommodating plural animals.

4. Claims 1,5 and 13,17,18,22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelsey et al.

5. Kelsey disclose a treadmill as depicted in Figure 2 having an adult male supported thereupon.

The examiner contends that the Kelsey et al treadmill width , when viewed with respect to the relative dimensions of the user and the treadmill , as shown in figure 2, appears approximately about 40-45 inches wide. An athletic adult male has a shoulder width range of from about 25 to 30 inches. The Kelsey figure 2 depiction clearly shows a treadmill width of the order of 2 ½ to three times the width of a user. Figure 2 is prior art. Figure 2 is considered an accurate representation of the proportionality of the treadmill with respect to a user. It is proper to approximate the width of the treadmill given the proportional dimensions provided in figure 2.

If not possessing precise dimensions, the examiner notes that providing a belt width of at least 45 inches is a matter of design choice and is a matter of size or degree, as modifications that would have been obvious to an artisan of ordinary skill. Furthermore, in view of KSR, it would have been obvious to one skilled in the art to try or experiment with various belt widths to accommodate

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different sized users; e.g., tailor the belt width according to the dimensions of the desired user, such as morbidly obese people who require larger accommodations.

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Response to Arguments

3. Applicant's arguments filed 2-6-08 have been fully considered but they are not persuasive.

4. As to claim 1, applicant continues to believe and assert that the treadmill users are "adult people" and therefore possess a size which is larger than the applied references. While "adult people" is now claimed, this language doesn't recite specific dimensions, and as the examiner has articulated several times in the previous office actions, adult humans come in various sizes, such as dwarfs whom are abnormally small.

The Examiner has reiterated the response from the previous office action, and supplemental remarks follow:

1- The 112 first paragraph rejection still stands.

The original Specification does not support an element 54 which is linear and which extends orthogonally away from a middle portion of the handlebar 46.

The new matter handle 54 is not integral with the handlebar 46 and handle 54 is not the "middle portion", rather the handlebar 46 possesses a middle portion which cannot be seen due to the display. Handle 54 is a separate handlebar.

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The figure 2 disclosure is also fatal. It failed to teach man things: Are the treadmill belts equal sized? How are the extra pair of rollers supported on the frame? Applicant has introduced a central support between the pair of treadmills for supporting the rollers. This structure lacks supporting the Specification.

The adage “a picture is worth a thousand words” is applicable here. In most cases, a drawing (picture) is more detailed than the written disclosure (word).

2- The Moon et al, modified supra, rejection meets the structural limitations. With respect to the method of using the device, the examiner has stated that “such a sized treadmill could be used for any desired function , such as accommodating plural animals”. Plural animals would include two children or small adult people , hence, some of the claims are met without modifying the Moon et al device.

3- Applicant has merely taken Moon’s figure 1 treadmill and made it wider. Note that all of the numeral markings are the same. Where a change in size of a prior art reference merely represents a change in degree, and not a change in kind, such a change is a design consideration within the skill of the art.

SUPPLEMENTAL EXAMINER’S REMARKS

In response to applicant’s remarks on page 3 of the amendment filed 5-10-06, the examiner contends that Figure 2 contains new matter with respect to the handlebar element 54. The examiner acknowledges that the Specification does state the general concepts of using a handle 54 and the use of pairs of treadmill belt and roller assemblies. As the examiner has attempted to explain previously, although there is a degree of specificity in the Specification, there are several elements shown in the newly submitted figure 2 which do not necessarily follow

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from the Specification as originally filed. These elements are considered new matter, as stated *supra*. The disclosure suggests a hypothetical arrangement of elements, which is fine for determining equivalents, but when that arrangement is being claimed the structure must be shown in the Drawings. It isn't a case of whether one skilled in the art would understand that the handlebar would extend perpendicularly and linearly from the middle of the main handle, nor that the extra pair of rollers can be supported on the frame in the manner shown in figure 2 but not shown in figure 1. This structural arrangement isn't necessarily "readily envisioned by one skilled in the art", contrary to applicant's assertion stated on line 1 of page 5.

The examiner remains unconvinced that the linear handle 54 would be anticipated and envisioned by a person having skill in the art.

The examiner does note the irony that if the 112 rejections were overcome, hypothetically speaking, then applicant's very own arguments would prove fatal in an anticipatory or obviousness type analysis of the claimed invention.

5. As the examiner stated previously: Applicant has merely taken Moon's figure 1 treadmill and made it wider. Note that all of the numeral markings are the same.

Where a change in size of a prior art reference merely represents a change in degree, and not a change in kind, such a change is a design consideration within the skill of the art.

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Derksen is considered to be from an analogous art. Both Moon and Derksen are treadmills having treadmill features which include rollers and belts and therefore inherently belt widths. Both are used to exercise mammals for gaiting type exercise.

Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve R. Crow whose telephone number is 571-272-4973. The examiner can normally be reached on Reg:8:30-6;Off First Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sc/Steve R Crow/
Primary Examiner, Art Unit 3764